IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2054 of 2002
to
FIRST APPEAL No 2066 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIRS OF DECD.PATEL KESHAVLAL SHANKARDAS

Versus

SPL.LAQ OFFICER

Appearance:
First Appeal Nos.2054 to 2066 of 2002
MR JM PATEL for MR AJ PATEL for the appellants in all matters
MR KT DAVE, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 08/10/2003

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE AKSHAY H.MEHTA)

By filing above-numbered appeals under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908, the appellant in each appeal has challenged legality of common judgment & award dated August 16, 2001 rendered by the learned Extra Assistant Judge, Mehsana, in Land Acquisition Reference Nos.58 to 70 of 1995 by which the appellant in each is held entitled to receive additional compensation at the rate of Rs.23=30ps. per sq.mtr. over and above the amount of compensation determined by the Land Acquisition Officer at the rate of Rs.3=30ps. per sq.mtr. and has claimed that compensation at the rate of Rs.30=00 per sq.mtr. should have been awarded by the Reference Court.

2. The fact that the lands which are subject matter of present appeals are situated in village Daran, Taluka Kadi, District Mehsana, were acquired for public purpose of Narmada Canal Project pursuant to notification issued under Section 4(1) of the Land Acquisition Act, 1894 ["the Act" for short] which was published in Government Gazette on August 1, 1991, is not in dispute. It may be stated that the claimants relied upon previous award of the Reference Court in Land Acquisition Reference Nos.226 to 249 of 1999 relating to the lands of village Daran, Taluka Kadi, District Mehsana, which was produced at Exhibit 14. Exhibit 14 indicates that the lands of village Daran, Taluka Kadi, were acquired for public purpose of Narmada Canal pursuant to publication of notification issued under Section 4(1) in the official gazette on August 1, 1991 and that the District Court had awarded total compensation at the rate of Rs.28=00 per sq.mtr.. The claimants had also produced another award of the District Court rendered in Land Acquisition Reference Nos.200 to 225 of 1999 relating to the lands of village Daran, Taluka Kadi, which was produced at Exhibit 15. Exhibit 15 indicates that the lands of village Daran were acquired for public purpose of Narmada Canal pursuant to publication of notification issued under Section 4(1) of the Act in the official gazette on August 1, 1991 and that the District Court had awarded, in all, Rs.28=00 per sq.mtr. as compensation. Another award of the District Court relating to the lands of village Daran, Taluka Kadi, rendered in Land Acquisition Reference Nos.158 to 177 of 1999 was also relied upon by the claimants which was produced at Exhibit 16. It indicates that the lands of village Daran, Taluka Kadi were acquired for public purpose of Narmada Canal

pursuant to publication of notification issued under Section 4(1) of the Act in the official gazette on August 1, 1991 and that the District Court had awarded total compensation at the rate of Rs.28=00 per sq.mtr. Yet another award of the District Court relating to the lands of village Daran, Taluka Kadi, rendered in Land Acquisition Reference Nos.268 to 298 of 1999 was relied upon by the claimants which was produced at Exhibit 17. It indicates that the lands of village Daran, Taluka Kadi, were acquired for public purpose of Narmada Canal pursuant to publication of notification issued under Section 4(1) of the Act in the official gazette on August 1, 1991 and that the District Court had awarded total compensation at the rate of Rs.28=00 per sq.mtr.. However, the claimants had also produced judgment of the High Court rendered in First Appeal Nos.2445 to 2468 of 2000 on March 17, 2001 at Exhibit 22 wherein the award of the Reference Court produced at Exhibit 14 was challenged and the High Court had held that the claimants were entitled to compensation at the rate of Rs.26.60ps. per sq.mtr. Further, the claimants had produced a copy of the judgment of the High Court relating to lands of village Daran, Taluka Kadi, rendered in First Appeal Nos.2716 to 2741 of 2000 on March 17, 2001 at Exhibit 23. It indicates that the award of the Reference Court produced at Exhibit 15 was the subject matter of challenge in those appeals and the High Court had granted compensation to the claimants at the rate of Rs.26=60ps. per sq.mtr. Further, the claimants had also produced judgment of the High Court relating to the lands of village Daran, Taluka Kadi, rendered in First Appeal Nos.2469 to 2488 of 2000 on March 17, 2001 at Exhibit 24. It indicates that the judgment of the Reference Court produced at Exhibit 16 was the subject matter of challenge in those appeals and the High Court had granted compensation to the claimants at the rate of Rs.26=60ps. per sq.mtr. The claimants had also produced judgment of the High Court relating to the lands of village Daran, Taluka Kadi, rendered in First Appeal Nos.956 to 986 of 2001 on March 17, 2001 at Exhibit 25. It indicates that judgment of the Reference Court produced at Exhibit 17 was the subject matter of challenge in those appeals and the High Court had granted compensation to the claimants at the rate of Rs.26=60ps. per sq.mtr.

3. In view of these judgments of the High Court produced at Exhibits 22, 23, 24 & 25, Mr.A.J.Patel, learned Senior Counsel of the claimant in each appeal, does not press the claim for enhanced compensation. The claim for enhanced compensation is, therefore, liable to be rejected as not pressed.

4. The only point argued by Mr.A.J.Patel, learned Senior Counsel of the claimant in each appeal, was that the Reference Court was not justified in holding that the claimants are not entitled to interest on the amount which is awardable under Section 23(1-A) & 23(2) of the Act. According to the learned Senior Counsel of the claimants, direction given by the Reference Court in paragraph 21(6) of the impugned award should be set aside in view of the decisions of the Supreme Court in (i) Sunder v. Union Of India, 2001 (3) G.L.H. 446; and (ii) Nagpur Improvement Trust v. Vasant Rao & Ors., 2003 (1) G.L.H. 140 by holding that the claimants would be entitled to compensation awarded with interest on the aggregate amount including solatium.

5. Mr.K.T.Dave, learned Assistant Government Pleader appearing for the respondents, submitted that direction given by the Reference Court in paragraph 21(6) of the impugned award is in accordance with law and, therefore, the same may not be disturbed by the Court.

6. We have considered the submissions advanced at the Bar and the decisions of the Supreme Court. The plea that a claimant is not entitled to interest on the additional amount determined under sub-section (1-A) of Section 23 of the Act, which is raised on behalf of the respondents, has no substance. In the case of Sunder v/s. Union of India (supra), a five judge Constitution Bench of the Supreme Court had an occasion to consider the question, whether interest on the amount envisaged under Section 23(1-A) and 23(2) of the Act is payable to the claimants. However, on interpretation of the provisions of Sections 23(2), 26, 28 and 34 of the Act, it is clearly held by the Supreme Court that the expressions "awarded amount" would mean that the amount of compensation worked out in accordance with the provisions contained in Section 23 including all the subsections thereof and that splitting up the compensation into different components for the purpose of payment of interest under Section 34 was not in the contemplation of Legislature when that section was framed or enacted. The final conclusion reached by the Supreme Court in the said case was that the persons entitled to compensation is also entitled to get interest on the aggregate amount including solatium. Further, in N.I.Trust (supra), the following pertinent observations have been made by the Supreme Court in paragraph 53.

"53. Civil Appeal Nos.6590 to 6592 of 2001
were partly allowed by this Court by order dated

> September 19, 2001 in so far as the claim for interest on the enhanced solatium under Section 23(2) of the Land Acquisition Act is concerned. Their claim to interest on the sum payable under sub-section (1-A) of Section 23 of the Land Acquisition Act must also be allowed in view of the judgment of this Court in Sunder v. Union of India (supra). Accordingly these appeals are allowed and it is held that the claimants are also entitled to interest on the amount payable to them under sub-section (1-A) of Section 23 of the Land Acquisition Act. The respondents are directed to compute and pay the interest payable to the appellants in accordance with law as enunciated in Sunder v. Union of India (supra)."

A bare reading of the above quoted observations makes it evident that a claimant is also entitled to interest on the sum payable under subsection (1-A) of Section 23 of the Act. Therefore, directions given by the Reference Court in paragraph 21(6) of the impugned judgment will have to be set aside by holding that the claimant in each appeal would be entitled to interest on the amount awarded under Section 23(1-A) & 23(2) of the Act. To that extent, the appeals will have to be allowed.

7. For the foregoing reasons, the appeals partly succeed. The finding that the claimants are entitled to compensation at the rate of Rs.26.60ps. per sq.mtr. is not disturbed, and is hereby upheld which means that the appellant in each appeal will not be entitled to additional compensation as claimed in the appeal. However, the direction given by the Reference Court that the claimants are not entitled to get interest on the amount which is awarded under Section 23(1-A) & 23(2) of the Act is hereby set aside by holding that the claimants would be entitled to get interest in accordance with Sec.28 of the Act, on the amount which is awardable to them under Section 23(1-A) & 23(2) of the Act. Rest of the directions contained in the impugned awards are not disturbed and are hereby upheld. The appeals are partly allowed to the extent indicated hereinabove. There shall be no order as to costs. The Office is directed to draw the award in terms of this judgment.

(Kshitij R. Vyas, J.)

(Akshay H. Mehta, J.)

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